

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES L. WATKINS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Kansas City, MO

*Docket No. 02-1536; Submitted on the Record;
Issued May 21, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award.

On March 13, 1996 appellant, then a 54-year-old tractor-trailer operator, filed a claim alleging that he sustained an injury to his back that day while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claims for lumbar strain and left-sided herniated nucleus pulposus at T8-9 and paid appropriate benefits.¹

On August 23, 2001 appellant filed a claim for a schedule award. In support of his claim, appellant submitted a December 15, 1998 report from Dr. P. Brent Koprivica, Board-certified in both preventive and emergency medicine, who stated that appellant had reached maximum medical improvement and advised that he had utilized the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, to find that appellant had a 13 percent impairment of the whole person based on "his chronic thoracic and lumbosacral mechanical pain," and loss of lumbar flexion and extension.

By letter dated September 5, 2001, the Office advised appellant that a schedule award may only be granted when a claimant reached maximum medical improvement. The Office noted that in his case the medical evidence did not indicate that he had reached maximum medical improvement. Furthermore, the Office noted that the Federal Employees' Compensation Act does not allow for payment of a schedule award for a back condition unless it leads to impairment of a scheduled member such as the arms or legs.

¹ Appellant filed a separate claim for traumatic injury on November 20, 1997 which the Office denied on January 10, 1998. Subsequently, the Office accepted two recurrence of disability claims based on the March 13, 1996 work-related injury, but denied a third recurrence claim on September 25, 1998. A hearing representative affirmed that decision on June 4, 1999. On April 28, 2000 the Office accepted a temporary aggravation of a preexisting chronic thoracic and lumbar spine condition based on the November 17, 1997 incident, which ceased in September 1999.

In a report dated October 3, 2001, Dr. David R. Williams, appellant's treating physician Board-certified in family practice, stated that he had been treating appellant since March 1996 for "significant back injuries which are directly related to work." Dr. Williams opined that appellant had reached maximum medical improvement and that "his back condition was so severe it has led to a permanent impairment of the upper extremities." He added that appellant also had an impairment of the lower extremities "manifesting as decreased strength and mobility in the lower extremities and numbness in the legs intermittently during work-related activity" and concluded that appellant had a 13 percent impairment "based on his chronic, mechanical, thoracolumbar pain syndrome."

In a report dated October 26, 2001, the Office medical adviser noted that the Office did not accept either lumbar or thoracic disc pathology and that appellant's accepted conditions of lumbar strain and herniated nucleus pulposus at T8-9 would not cause symptoms affecting the upper extremities. He recommended that the Office not refer this case "for consideration of an impairment rating."

By decision dated October 29, 2001, the Office denied appellant's claim for a schedule award. On November 28, 2001 appellant, through counsel, requested review of the written record. By decision dated April 30, 2002, a hearing representative affirmed the Office's October 29, 2001 decision denying appellant's claim.

The Board finds that appellant has failed to establish entitlement to a schedule award based on his accepted conditions.

Under section 8107 of the Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs.⁴ The schedule award provisions of the Act⁵ and its implementing regulation⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁷

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ The Board notes that, while appellant filed a claim for a schedule award for his right shoulder condition on September 29, 1994, he did not file either a Form CA-1 or CA-2 regarding this condition.

⁵ 5 U.S.C. § 8107 *et seq.*

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

Appellant filed a claim for a schedule award based on the Office's acceptance of lumbar strain and a herniated nucleus pulposus at T8-9. However, appellant failed to submit evidence that he had reached maximum medical improvement or that he had an impairment caused by the work-related injuries. In his December 15, 1998 report, Dr. Koprivica noted that appellant had a 13 percent whole person impairment rating based exclusively on conditions affecting his spine, *i.e.*, on pain in the thoracic and lumbar spine as well as loss of lumbar flexion and extension. However, the spine is not one of the organs or members of the body listed under section 8107 of the Act or added by regulation by the Secretary and therefore his report is of limited probative value.⁸ Further, Dr. Williams' October 3, 2001 report supporting an impairment rating is of limited probative value because it was not based on the A.M.A., *Guides* and thus was not derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.⁹

For these reasons, appellant has not met his burden of proof in establishing that he has any impairment due to the accepted employment injury of March 13, 1996 which would entitle him to a schedule award under section 8107 of the Act. Because appellant failed to submit probative medical evidence to support his claim for a schedule award, the Office properly denied his claim.

The decisions of the Office of Workers' Compensation Programs dated April 30, 2002 and October 29, 2001 are affirmed.

Dated, Washington, DC
May 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ See *Jacqueline S. Harris*, 54 ECAB ____ (Docket No. 02-203, issued October 4, 2002). Section 8101(19) of the Act specifically excludes the back from the definition of organ. See *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁹ *Richard F. Kastan*, 48 ECAB 651 (1997); further, Dr. Williams made no objective findings to support a specific impairment rating.